

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

JULIE BRANDENBURG,

**Complainant,**

and

EARL L. HENDERSON TRUCKING CO.,

Respondent.

CHARGE NO(S): 2008SF2377  
EEOC NO(S): 21BA81311  
ALS NO(S): S09-0321

**NOTICE**

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

Entered this 9<sup>th</sup> day of February 2010

**N. KEITH CHAMBERS**  
**EXECUTIVE DIRECTOR**

The Department of Human Rights, as well as Complainant, submit that the instant Complaint should be withdrawn because the Department filed the instant Complaint without first having obtained Complainant's permission to do so as required under 775 ILCS 5/7A-102(D)(4). In its motion to dismiss, Respondent agrees that the Department was without authority to file the instant Complaint. It also maintains, though, the Complaint should be dismissed with prejudice because, among other things, the text in Counts I through IV of the Complaint failed to state a

viable cause of action, and because the Department of Human Rights failed to make a necessary finding regarding the existence of substantial evidence as to these Counts.

### **Findings of Fact**

Based on the record in this matter, I make the following findings of fact:

1. On February 28, 2009, Complainant filed a Charge of Discrimination on her own behalf alleging that she was the victim of sex discrimination and retaliation.
2. On May 11, 2009, the Department of Human Rights entered a finding of substantial evidence as to certain portions of Complainant's Charge of Discrimination.
3. On June 19, 2009, the Department of Human Rights filed the instant Complaint on behalf of Complainant alleging that she was the victim of sex discrimination and retaliation.
4. On June 26, 2009, the Department of Human Rights filed a motion to withdraw the instant Complaint without prejudice, after noting that Complainant had contacted the Department on June 23, 2009, indicating that she had not given the Department permission to file the instant Complaint on her behalf.
5. On July 20, 2009, Respondent filed its own motion to dismiss the instant case, which essentially agreed with Complainant and the Department that the Department lacked statutory authority to file the instant Complaint without first having obtained Complainant's consent. The Respondent's motion alternatively asserted that the instant Complaint should be dismissed with prejudice for different reasons.

### **Conclusions of Law**

1. Section 7A-102(D)(4) provides that, upon a finding of substantial evidence, the Department may file a complaint with the Commission on behalf of the Complainant, but only if the Complainant first requests in writing that the Department do so within fourteen days after receipt of the Department's notice of substantial evidence.

2. The failure of a complainant to make a timely written request with the Department to file a complaint with the Commission precludes the complainant from commencing an action with the Commission.

### **Discussion**

Section 7A-102(D)(4) of the Human Rights Act (775 ILCS 5/7A-102(D)(4)) provides that upon a finding of substantial evidence, the Complainant has 90 days to file a complaint either in circuit court or with the Commission. However, section 7A-102(D)(4) further states that if the Complainant chooses to have the Department file a Complaint on his or her behalf with the Commission, the Complainant must send the Department a written request to do so within 14 days from the Department's notice of substantial evidence. If the Complainant fails to make a timely request that the Department file a complaint, her only remedy is the commencement of a civil action in circuit court. Thus, section 7A-102(D)(4) precludes Complainant from filing her own complaint with the Commission if she misses the 14-day deadline for requesting that the Department file a complaint on her own behalf with the Commission.

In reviewing the instant record, I agree that the instant Complaint should be dismissed since Complainant did not make a timely request with the Department to file a complaint on her behalf with the Commission, and there is no other provision in the current version of the Human Rights Act that allows Complainant to file her own complaint with the Commission. Accordingly, it would appear that a dismissal without prejudice to Complainant proceeding in circuit court would be the appropriate remedy. Respondent, though, wants me to find that the dismissal should be with prejudice on substantive grounds. However, as noted by Complainant's counsel, if the Commission lacks a statutory basis to consider the instant Complaint, it lacks a statutory basis to make any substantive findings as to whether the Complaint as composed states a valid cause of action.

**Recommendation**

For all of the foregoing reasons, it is recommended that the instant Complaint be dismissed without prejudice to Complainant filing a civil action in the appropriate circuit court.

ILLINOIS HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 10TH DAY OF SEPTEMBER, 2009